

LAW OFFICES OF  
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WASHINGTON, D.C. 20005  
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ROBERT G. SHEPHERD, JR.  
LOUIS E. GITOMER

FAX:  
(202) 728-1196

May 25, 1990

0-148A007

Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 7255-E FILED 1425  
MAY 25 1990 - 11 45 AM  
INTERSTATE COMMERCE COMMISSION

Dear Secretary McGee:

I have enclosed the original and two copies of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Master Equipment Lease Agreement, a secondary document dated June 15, 1989. The primary document to which this is connected is recorded under Recordation No. 7255. We request that this lease be recorded under Recordation No. 7255-E.

The names and addresses of the parties to the document are as follows:

Lessor:

GATX Capital Corporation, successor to  
GATX Leasing Corporation  
Four Embarcadero Center  
San Francisco, CA 94111

Lessee:

The Andersons  
P.O. Box 119  
Maumee, OH 43537

A description of the equipment covered by the document follows:

The equipment covered by the agreement consists of: 99-4,600 cubic feet covered hopper cars manufactured by AFC-Industries, Inc., with the following car numbers: AEX 351-401 and 403-450, inclusive (formerly numbered GTW 138100-138150 and 138152-138199, inclusive, respectively).

Honorable Noreta R. McGee  
May 25, 1990  
Page Two

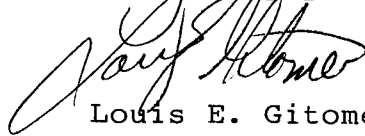
A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Louis E. Gitomer  
Suite 1200  
1133 15th Street, N.W.  
Washington, D.C. 20005

A short summary of the document to appear in the index follows:

Assignment through a Master Equipment Lease Agreement between The Andersons, P.O. Box 119, Maumee, OH 43537 and GATX Capital Corporation, formerly known as GATX Leasing Corporation, Four Embarcadero Center, San Francisco, CA 94111, dated June 15, 1989, and covering: 99-4,600 cubic feet covered hopper cars manufactured by AFC-Industries, Inc., with the following car numbers: AEX 351-401 and 403-450, inclusive (formerly numbered GTW 138100-138150 and 138152-138199, inclusive, respectively).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer", written over the typed name.

Louis E. Gitomer

LEG/bdr

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/25/90

OFFICE OF THE SECRETARY

Robert G. Shepherd  
1133 15th Street N.W.  
Suite 1200  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/23/90 at 11:45am and assigned recordation number(s). 7255-E

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

**MASTER EQUIPMENT LEASE AGREEMENT**  
(Rail Cars)

EQUIPMENT LEASE AGREEMENT, dated as of June 15, 1989, between GATX Leasing Corporation, a Delaware corporation ("Lessor"), and THE ANDERSONS, an Ohio limited partnership ("Lessee"). Any reference to this "Lease" shall refer to this Master Equipment Lease Agreement and, when the context so requires, each Schedule (as defined below) hereto.

The parties hereto agree as follows:

RECORDATION NO 7255-E FILED 1425

MAY 25 1990 - 11 45 AM

INTERSTATE COMMERCE COMMISSION

SECTION 1

DELIVERY AND LEASE OF CARS; TERM

1.1 Lessor shall lease the cars (each a "Car" and collectively, the "Cars") more fully described in a Schedule substantially in the form Exhibit A hereto (each a "Schedule") for the term set forth in the applicable Schedule.

1.2 The Cars shall be delivered to Lessee at Maumee, Ohio. The cost of movement to the delivery point shall be paid by Lessor.

1.3 (a) Lessee shall either: (i) accept each Car by notice in writing to Lessor in a form acceptable to Lessor (the "Delivery Notice") within five days of delivery of such Car or (ii) reject such Car during such five day period in accordance with Section 1.3(b), (c) and (d) hereof. The date of delivery of a Car to Lessee, if it is not so rejected, shall be the "Delivery Date" for that Car.

(b) Lessee represents that it has inspected a portion of the Cars. Lessee may reject any other Car if such Car is in materially worse condition than the Cars Lessee did inspect.

(c) Lessee may reject any Car which is not suitable for interchange pursuant to the current Interchange Rules as described in the Field Manual of the Interchange Rules of the Association of American Railroads ("AAR") (Mechanical Division, Operation and Maintenance Department) (Jan. 1, 1989), or successor rules (the "Interchange Rules") or has a defect pursuant to the rules and regulations of the U.S. Department of Transportation, Federal Railroad Administration ("FRA").

(d) If a Car is rejected, Lessee will promptly notify Lessor in writing of the reason therefor, using a Delivery Notice, and Lessor shall have a reasonable opportunity to correct the problem at Lessor's expense and to redeliver the Car to Lessee. Unless Lessor is notified that a Car is rejected, each Car will be considered accepted on the Delivery Date and rent shall commence on that date.

1.4 This Lease may not be terminated by Lessee for any reason whatsoever. To the extent permitted by applicable law, Lessee hereby waives any right which it may now have or hereafter acquire to terminate or cancel this Lease or to surrender any of the Cars.

## SECTION 2

### RENTAL PAYMENTS

2.1 Lessee shall pay Lessor rent for each Car as provided in the applicable Schedule, at the offices of Lessor described in Section 13.1 hereof. Such rent shall be payable commencing on the Delivery Date. Rent for partial months shall be prorated on a daily basis based on a month of 30 days. If any rental payment date is a day other than a business day in the State of California, the rent otherwise payable on such date shall be payable on the next succeeding business day.

2.2 (a) Invoices shall be issued on, or if practicable, within approximately 15 days prior to, the first day of each month by Lessor or its agent, commencing on the first such date after the first Delivery Date. Rent for each Car shall be payable on the Delivery Date of such Car (for the remaining days in the month in which such Car is delivered) and thereafter on the first day of each consecutive month for the term of this Lease.

(b) Lessee acknowledges that any such invoices shall be for Lessee's convenience only. Lessee's nonreceipt of an invoice shall not relieve Lessee of its obligation to make any payment payable hereunder when due.

(c) This is a net lease. Lessee's obligation to pay rent and all other amounts payable under this Lease shall be absolute and unconditional and shall not be affected by, and such payment shall be made without abatement, suspension, deferment or diminution by reason of any circumstance or occurrence whatsoever including, without limitation, any offset, counterclaim, recoupment, defense or other right which Lessee may now or hereafter have against Lessor or any legal person controlled by it, in control of it, or under common control with it, directly or indirectly, or any assignee of Lessor.

2.3 If any rental or other payment is not paid when due, Lessee shall pay interest thereon at a rate equal to the rate of interest publicly announced by Wells Fargo Bank, National Association, San Francisco, California, or its successor, as its prime rate, as such rate may change from time to time (the "Prime Rate"), plus 3%, or if lower, the highest rate permitted by applicable law.

## SECTION 3

### REPRESENTATIONS AND WARRANTIES OF LESSOR

3.1 Lessor represents and warrants that it has the lawful right to lease

the Cars to Lessee in accordance with the terms hereof.

3.2 THE LEASE OF EACH CAR IS "AS IS, WHERE IS." THE WARRANTY SET FORTH IN SECTION 3.1 HEREOF IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF LESSOR WHETHER WRITTEN, ORAL OR IMPLIED, AND LESSOR SHALL NOT BY VIRTUE OF HAVING LEASED THE CARS BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY. LESSEE ACKNOWLEDGES AND AGREES THAT: (A) LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN PROPERTY OF SUCH KIND AS THE CARS; (B) LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO THE DESIGN, OPERATION, MERCHANTABILITY, CONDITION, QUALITY OR DURABILITY OF THE CARS, THEIR SUITABILITY FOR THE PARTICULAR PURPOSES AND USES OF LESSEE, THE PRESENCE OR ABSENCE OF ANY DEFECTS (WHETHER LATENT OR PATENT), THE POSSIBLE INFRINGEMENT OF ANY PATENT OR TRADEMARK, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE CARS; AND (C) LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY CAR OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, ANY DEFICIENCY OR DEFECT THEREIN, THE USE OR MAINTENANCE THEREOF, ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS OR FOR ANY DAMAGE WHATSOEVER OR HOWSOEVER CAUSED, as all such risks are to be borne by Lessee. Lessor makes no representation as to the treatment of this Lease, the Cars or the rent for financial reporting or tax purposes. Lessee hereby waives any claim Lessee may have or acquire in the future against Lessor for any loss, damage or expense caused by any Car or any defect therein or the use or maintenance thereof.

#### SECTION 4

##### REPRESENTATIONS AND WARRANTIES OF LESSEE

Lessee represents and warrants as of the date hereof that:

4.1 Lessee is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Ohio.

4.2 Lessee has the full power, authority and legal right to execute and deliver this Lease and perform the terms hereof. This Lease has been duly authorized, executed and delivered and constitutes valid and binding obligations of Lessee enforceable in accordance with its terms.

4.3 Neither the execution and delivery of this Lease nor the performance of the terms hereof by Lessee contravene any law, regulation, judgment, order or permit affecting Lessee or result in any breach of, or constitute an event of default under, any contract or agreement or other instrument to which Lessee or any of its subsidiaries is a party or by which Lessee or any such subsidiary or any of its or their properties may be bound.

4.4 No consent of the shareholders, partners or the trustee or holder of any indebtedness or obligation of Lessee is a condition to the performance of the terms hereof by Lessee or the validity of this Lease.

4.5 No notice to, filing with, or approval of, any governmental agency or

commission is a condition to the performance of the terms hereof by Lessee or to the validity or enforceability of this Lease.

4.6 There is no action or proceeding pending or, insofar as Lessee knows, threatened against Lessee or any of its affiliates before any court or administrative agency which might have a materially adverse effect on the business, condition or operations of Lessee or the performance by Lessee of the terms of this Lease.

4.7 No one acting by, through or under Lessee will have or be entitled to a lien, mortgage, charge, encumbrance, security interest or other adverse claim on or in respect of any Car or this Lease (individually a "Lien" and collectively "Liens").

## SECTION 5

### POSSESSION AND USE OF CARS; MARKINGS

5.1 At all times during the term of this Lease, title to the Cars shall be vested in Lessor to the exclusion of Lessee, and the delivery of the Cars to Lessee and Lessee's possession thereof shall constitute a letting only. Notwithstanding the foregoing, Lessee may sublease the Cars with Lessor's prior written consent (which consent shall not be unreasonably withheld) provided: (a) Lessor is given 5 days' notice of such sublease; (b) any such sublease is expressly subject and subordinate to the terms and conditions of this Lease; (c) no such sublease shall operate to relieve Lessee of any of its obligations hereunder; (d) the term of any such sublease does not extend beyond the term of this Lease; and (e) the sublease will not subject the Cars to wear and tear (including corrosion) substantially more severe than would result from use of the Cars by Lessee. If Lessee subleases any Car, then Lessee hereby grants to Lessor a first priority security interest in and to any such sublease and the proceeds therefrom.

5.2 Except as set forth in Section 5.1 hereof, Lessee shall not assign or transfer or attempt to assign or transfer this Lease or any of Lessee's rights herein or in any Car.

5.3 Lessee shall not directly or indirectly, create or incur or suffer to be created or incurred or to exist any Lien of any kind on any Car (other than Liens which Lessee is contesting in good faith or discharges within 30 days of its occurrence) or on any of its rights under this Lease, and if any such Lien, shall come to exist, Lessee shall, at its sole cost and expense, promptly remove the same and provide Lessor such written evidence of such removal as Lessor may reasonably request.

5.4 Lessee shall, at Lessee's sole cost and expense, restencil and reregister the Cars with Lessee's AAR reporting marks and, on Lessor's request, with the words such as: "Property owned and leased by GATX Leasing Corporation", on acceptance of each Car under this Lease and file an addendum to this Lease in form and substance satisfactory to Lessor pursuant to Section

13.3 hereof setting forth such reporting marks. Lessee shall, on Lessor's request made before the end of the Lease term and at Lessee's cost and expense, remove or pay for the removal of such reporting marks on return of the Cars to Lessor. Lessee will not otherwise add, remove or alter reporting marks or identification of Lessor on the Cars except as requested by Lessor.

## SECTION 6

### MAINTENANCE OF CARS; INSPECTION; RECORDS; EARLY TERMINATION

6.1 Lessee shall, at its sole cost and expense, maintain the Cars in serviceable condition, free of broken, damaged or missing parts, suitable for the commercial use originally intended, and meeting applicable standards as prescribed by the Interchange Rules and the FRA rules and regulations.

6.2 (a) Lessee agrees to comply, at its sole cost and expense, with all applicable laws, regulations, directives, statutes, ordinances and rules, including, without limitation, the rules of the FRA, the Interstate Commerce Commission ("ICC") and the Interchange Rules and the rules and regulations of the Environmental Protection Agency (including state agencies thereof or other agencies serving a similar purpose), with respect to the use and maintenance of each Car. If any equipment, part or appliance in or on any Car is altered, added to, replaced, changed or otherwise modified (each, a "Modification" or collectively, "Modifications") in order to comply with any such laws, regulations, directives, statutes, ordinances or rules, Lessee shall make such Modifications at its own cost and expense and, notwithstanding any other provision of this Lease, title thereto shall thereupon immediately vest in Lessor.

(b) However, if such Modifications, which shall be required to be made before the expiration of this Lease, involve costs and expenses with respect to each Car in excess of the Stipulated Loss Value in effect on the Early Termination Date (as defined below) with respect to that Car, Lessee may early terminate this Lease on the first day of the second month (the "Early Termination Date") after it has: (i) provided Lessor with (A) written notice of its intention to terminate this Lease with respect to such Car and (B) a written estimate of an independent and reputable third party such costs and expenses, and (ii) paid all amounts due to Lessor up to the Early Termination Date. On such Early Termination Date, Lessee shall return such Car to Lessor in accordance with Section 8 hereof (except to the extent of making the Modifications giving rise to such termination).

6.3 Lessee shall not use or permit any Car to be used in an improper or unsafe manner, in violation of any contract of insurance applicable to the Car or in violation of any applicable law, regulation, directive, statute, ordinance or rule or manufacturers' warranty.

6.4 Lessee shall pay for any and all materials and other supplies required for the operation of the Cars.



6.5 Lessee shall keep and maintain and make available to Lessor all records of Lessee's use, operation, inspection, repairs and maintenance of the Cars. Lessor may inspect any Car at any reasonable time on request to Lessee.

6.6 Lessee may not make Modifications to the Cars without Lessor's written consent, except to comply with Sections 6.1 and 6.2 hereof.

6.7 Lessee shall furnish Lessor with its annual Financial Reports and such other financial information as is regularly provided to its lenders and partners and as Lessor shall otherwise reasonably request.

## SECTION 7

### INDEMNIFICATION; TAXES

7.1 (a) Lessee shall indemnify, reimburse and hold Lessor and its successors, assigns, agents and employees harmless from and against all liabilities, costs, expenses (including attorneys' fees and expenses), fines, penalties (and other charges of applicable governmental authorities), damages to property of Lessee or others (including, without limitation, consequential or corrosion damages), loss of use of property (including, without limitation, any Car) or injury to or death of persons (including, without limitation, agents and employees of Lessee) which result from the use, leasing, ownership, operation, possession, replacement, maintenance, control, storage, loading, unloading, delivery, redelivery or condition of any Car from the date of acceptance of such Car hereunder until redelivery of such Car to Lessor in accordance with Section 8 hereof.

(b) However, Lessee shall have no such obligation to indemnify Lessor under Section 7.1(a) hereof if and only to the extent: (a) the indemnity arises with respect to the condition of, or a defect in, a Car existing prior to its Delivery Date, (b) Lessor is directly and solely responsible for creating or allowing such condition or defect to so exist and (c) Lessee's insurance to be provided under Section 9 hereof is in full force and effect and will not fully cover the entire liability of Lessor arising from such indemnity claim by Lessor against Lessee.

7.2 Lessee shall pay, or cause to be paid, or shall on demand reimburse Lessor for, all other taxes, fees, exactions, assessments, charges, fines, penalties or interest on any thereof, including, without limitation, ad valorem, sales, property, use, rental, gross receipts, and excise taxes (except net income taxes of Lessor) as may be levied or assessed against Lessor (collectively, "Impositions") or Lessee in connection with this Lease or arising out of or be measured by any sale, lease, rental, use, operation, ownership, payment, possession, shipment, storage, loading, unloading delivery, redelivery or condition of any Car. Lessee shall at all times keep each and every part of the Cars free and clear of all Impositions which might in any way adversely affect the title of Lessor or result in a Lien thereon.

## SECTION 8

### RETURN OF CARS

8.1 On the expiration or termination of the term of this Lease, Lessee shall assemble all the Cars at one safe and accessible location on such storage tracks as Lessee may reasonably select. Lessor and Lessee shall jointly inspect the Cars to determine if each Car is clean and free of commodities or residue and complies with the standards set forth in Section 6.1 and 6.2 hereof. Lessee shall deliver the Cars to such location as Lessor and Lessee may reasonably agree. The cost of this redelivery shall be borne by Lessor, except that Lessee shall use its best efforts to reduce the transportation cost for such redelivery.

8.2 If any Car does not comply with the standards set forth in Section 8.1 hereof, Lessee shall promptly correct any such deficiency, at Lessee's sole cost and expense, and Lessor and Lessee shall jointly reinspect the Cars promptly.

8.3 Any Car delivered to Lessor hereunder shall have all accessories and parts installed thereon as were installed at the Delivery Date thereof and shall be equipped with all required or permitted Modifications made thereto during the term hereof in accordance with Sections 6.2 and 6.6 hereof.

8.4 Lessee shall have a reasonable time to assemble and repair the Cars pursuant to Sections 8.1, 8.2 and 8.3 hereof. However, any Car not available for inspection and in the condition required by Sections 6.1, 6.2 and 8.1 within 30 days after the expiration or termination of this Lease shall be subject to holdover rentals starting 30 days after lease expiration or termination at a rate equal to rentals described in Section 2.1 or fair market rental value for the Cars, as reasonably determined by Lessor, whichever is higher. The holdover rentals shall then continue until the subject Cars are available for inspection and in the condition required by Sections 6.1, 6.2 and 8.1. Such holdover rent shall be paid on demand. Such holdover rent shall not be applicable to any Car subject to Section 10.1 hereafter.

## SECTION 9

### INSURANCE

9.1 At its own expense, Lessee shall, throughout the term of this Lease and until the last Car is redelivered to Lessor in accordance with Section 8, maintain: (a) "all risk" insurance in at least the values set forth opposite the relevant dates set forth in an Annex to the applicable Schedule hereto (the "Stipulated Loss Values"), (b) Comprehensive General Public Liability Insurance, including without limitation, contractual liability insurance with limits of at least \$10,000,000 for bodily injury, including death and (c) such other insurance as Lessor may reasonably request.

9.2 All policies of insurance shall: (a) be issued by an insurance carrier and in a form reasonably acceptable to the Lessor, (b) name Lessor as an additional insured or loss payee, or both, as appropriate, (c) provide for

(i) at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or material modification of the insurance, and (ii) a waiver of subrogation against Lessor and Lessee (if such waiver can be obtained without substantial cost to Lessee relative to the cost of all other insurance coverages required in this Section 9), (d) not be invalidated by a remedial action of Lessor and (e) insure the interest of Lessor regardless of any breach of warranty or other provision of the insurance policies by Lessee. Lessee's policy shall be primary and without contribution from Lessor. The Lessee shall, prior to the first Delivery Date of any Car and annually thereafter on the anniversary thereof, furnish appropriate written evidence of such insurance. Lessee may self-insure any casualty to the Cars employing sound actuarial principals and standard industry practice on Lessor's prior written consent, which consent shall not be unreasonably withheld.

## SECTION 10

### CASUALTIES AND REPORTS

10.1 Lessee shall be solely responsible for any loss, theft, condemnation or damage to any Car. If a Car is lost, stolen, condemned or damaged beyond repair or is otherwise not useful for any purpose, then Lessee shall, not later than the next rent payment after any such occurrence, or if this Lease has expired or been terminated, on demand, but in, either case, no later than 30 days after such expiration or termination, as the case may be, pay Lessor or cause Lessor to be paid the Stipulated Loss Value, computed as of the rent payment date immediately prior to such loss, theft, condemnation other damage, for each such Car or if the Stipulated Loss Value becomes payable on the Delivery Date for such Car, then the Stipulated Loss Value set forth in Annex 1 hereto opposite the first rent payment date for such Car, shall apply. On receipt of such payment and all other amounts due under this Lease, rent shall cease with respect to such Car. Title to such Car shall be transferred to Lessee, "AS IS, WHERE IS" without recourse to or warranty of Lessor, on receipt of such payment and amounts by Lessor.

10.2 Lessee shall, without demand, immediately notify Lessor in reasonable detail of any casualty or accident involving actual or potential damages in excess of \$5,000 relating to any Car.

10.3 If during the term of this Lease any Car is seized by a governmental authority for a period less than the then unexpired term of this Lease, this Lease shall continue in full force and effect as if such taking had not occurred and rent hereunder shall not be diminished or abated. Provided that no default or Event of Default (as defined in Section 11 hereof) exists and is continuing, Lessee shall be entitled to receive and retain any award paid by the seizing governmental authority as compensation for the interruption of Lessee's leasehold interest in such Car. If a default or Event of Default so exists and is continuing, Lessor shall receive any award as security for performance of this Lease, which award may be applied by Lessor to amounts due or to become due hereunder.

## SECTION 11

### DEFAULT

11.1 The following events shall constitute "Events of Default" for purposes of this Lease:

(a) Lessee shall fail or be unable to make any rental or other payment required hereby in full and such inability or failure shall continue for 10 days;

(b) Lessee shall fail to procure or maintain any insurance coverage required hereby;

(c) Lessee shall fail or be unable to observe or perform any covenant, condition or agreement of Lessee contained herein, other than such as are referred to in clause (a) and (b) above, and such failure shall continue for 30 days after the giving of notice thereof by Lessor;

(d) Any representation or warranty of Lessee contained herein or any representation or warranty contained in any document or certificate furnished to Lessor in connection herewith or pursuant hereto shall be untrue or incorrect in any material respect when made;

(e) Lessee shall apply for or consent to the appointment of, or the taking of possession by, a custodian, receiver, trustee or liquidator of itself or a substantial part of its property, shall become insolvent, shall fail or be unable to pay its debts generally as they become due, or shall cease to conduct its business in its ordinary course;

(f) Lessee shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any other federal or state bankruptcy, insolvency or other law relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; file an answer admitting the material allegations of a petition filed against it in a case under Title 11 of the United States Code or in proceedings relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; or taking corporate action for the purpose of effecting any of the foregoing; or

(g) Without the application, approval or consent of Lessee, a proceeding shall be instituted in any court of competent jurisdiction, seeking in respect of Lessee an order for relief under the aforesaid Title 11, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a custodian, receiver, trustee or liquidator of Lessee, any substantial part of its property or any of the Cars, or other such like relief in respect of Lessee under any bankruptcy, insolvency or other similar law, and the same shall continue undismissed or unstayed for any period of 60 days.

11.2 Upon the occurrence of an Event of Default, Lessor may, at its option:

- (a) enforce performance by Lessee of the terms hereof;
- (b) recover damages for Lessee's breach of the terms hereof;

(c) by giving notice to Lessee specifying the Event of Default, accelerate the due date with respect to all rents contemplated by this Lease and due after the date thereof, and, but for the giving of such notice, all such rents, discounted at the Prime Rate in effect at the date of acceleration, and any other amounts due hereunder shall be immediately due and payable;

(d) by giving notice to Lessee specifying the Event of Default, terminate this Lease effective on the date specified in such notice (hereinafter, the "Date of Termination"), and on the Date of Termination, this Lease shall expire and terminate and all rights of Lessee under this Lease shall absolutely cease (but Lessee shall remain liable as herein set forth), and Lessee shall deliver possession of the Cars to Lessor in accordance with Section 8 hereof. Upon such expiration and termination, Lessor shall have the right to immediate possession of the Cars free of any claims of Lessee whatsoever, and Lessor may remove all or any of the Cars, from the possession of Lessee (or any sublessee), its agents and affiliates, at Lessee's sole cost and expense, and for such purpose may enter premises where the Cars are located, and may use and employ any supplies, services, means or other facilities of Lessee (or any sublessee), its agents and affiliates, with or without process of law, and Lessor shall not be liable for, and shall be held harmless by Lessee from any liability for, damage caused to real or personal property during any such removal; provided that Lessor acts in a commercially reasonable manner. Lessee shall, without further demand, within five days of the Date of Termination pay to Lessor: (i) an amount equal to any unpaid rent due and payable for all periods up to and including the Date of Termination, (ii) plus all Default Costs (as hereinafter defined), (iii) plus, as liquidated damages for loss of a bargain and not as a penalty, and without duplication of any payment under Section 11.2(c) hereof and subject to Section 11.6 hereof, an amount equal to the Stipulated Loss Value for all Cars subject to the Lease on the Date of Termination or accelerated rent under Section 11.2(c) hereof, as the case may be, computed as of the rent payment date immediately prior to the Date of Termination, (iv) plus all other sums due Lessor hereunder. Interest at the rate specified in Section 2.3 hereof shall be paid on all amounts due hereunder, including, without limitation, such Default Costs, until paid in full. Following the return of the Cars to Lessor pursuant to this Section 11.2, Lessor shall, within a commercially practicable time, proceed to either sell or re-let the Cars (as hereinafter described) in a commercially reasonable manner.

11.3 Lessee shall, upon demand, reimburse Lessor for all expenses, charges, costs and commissions (including reasonable attorneys' fees and expenses) reasonably incurred by Lessor in enforcing its rights hereunder and in taking possession of, disassembling, overhauling, repairing, maintaining, transporting, insuring, storing or modifying the Cars determined by Lessor to be required to place such Cars in condition suitable for sale, re-lease or use of the Cars (such expenses, charges, costs and commissions sometimes being herein called "Default Costs"). Amounts recoverable under this Section 11.3 shall include reasonable Default Costs incurred after the Date of Termination.

11.4 Lessor shall have the option, if it elects to re-lease any Cars as contemplated in Section 11.2(d) hereof, on or after the occurrence of an Event of Default, whether or not it shall then have possession thereof, to establish conclusively the present value at the Date of Termination of the prevailing rental value of a Car by entering into an arm's length (see 11.5) bona fide lease of the Car with a third party which lease shall be free from any and all claims at law or in equity of Lessee. If Lessor exercises such option, the present worth at the Date of Termination of the prevailing rental value of the Cars shall be conclusively deemed to be the proceeds of such bona fide lease, to the date on which the Term would have expired but for such termination, discounted at the Prime Rate in effect at the Date of Termination from the dates such proceeds are to be paid to Lessor thereunder to the Date of Termination.

11.5 Lessor shall also have the option, if it elects to sell any Car as contemplated in Section 11.2(d) hereof, on or after the occurrence of an Event of Default, whether or not it shall have possession thereof, to establish conclusively the prevailing sale value of a Car as of the rental payment date preceding the Date of Termination by consummating a bona fide arm's length sale of the Car to a third party which sale shall be free from any and all claims at law or in equity of Lessee. Lessor may deduct from any such sale proceeds any or all outstanding Default Costs. The aforementioned option may be exercised by public or private sale, with or without advertisement or publication, as Lessor may determine. Lessor may otherwise dispose of the Cars, hold the Cars idle, or lease the Cars to others (for a period greater or lesser than the balance of the term of this Lease in the absence of the termination), all on such terms and conditions as Lessor may determine and all free and clear of any rights of Lessee and of any claim or right of redemption of Lessee in equity, at law or by statute, whether for loss or damage or otherwise.

11.6 The proceeds of such sale or re-letting, as described in Sections 11.4 and 11.5 hereof, as the case may be, shall be applied, as received by Lessor, first, to pay all Default Costs, second, against the amount of Lessee's obligations under or in respect of this Lease other than Default Costs (such obligations, together with Default Costs, being herein sometimes called "Lessee's Default Obligations"), to the extent not previously paid by Lessee under this Section 11, and third, to reimburse Lessee for the Stipulated Loss Value under Section 11.2(d) hereof or accelerated rent under Section 11.2(c) hereof paid by Lessee to Lessor per Car as a consequence of the termination and to the extent previously paid by Lessee as liquidated or other damages to (and to the extent retained by) Lessor free of any claims to such payment by Lessee, any trustee or other third party. Any surplus remaining thereafter shall be retained by Lessor. To the extent that Lessee's Default Obligations remain outstanding Lessee shall forthwith fully pay to Lessor the remaining amount thereof.

11.7 Each and every power and remedy hereby specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of time with regard to

any payment due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein.

## SECTION 12

### ASSIGNMENT BY LESSOR

Lessor may assign this Lease without notice to, or the consent of, Lessee, but Lessee shall, on notice thereof, comply in all respects with the requirements of the assignee of Lessor of this Lease or any rights hereunder, providing assignment does not expand any of Lessee's obligations or diminish Lessee's rights under this Lease.

## SECTION 13

### MISCELLANEOUS

13.1 All demands, notices and other communications hereunder shall be in writing, and shall be deemed to have been duly given when delivered, if personally delivered; or when sent, if mailed certified or registered mail, postage prepaid, or when sent, if transmitted by cable or telex or telefax, charges prepaid; in each case addressed to the parties at the locations specified below, or such other location(s) as may hereafter be furnished in writing by either party to the other:

To Lessee:       The Andersons  
                      P.O. Box 119  
                      Maumee, Ohio 43537  
                      Attention: Transportation Department  
                      (419) 891-6513 (telefax)

To Lessor:        GATX Leasing Corporation  
                      Four Embarcadero Center, Suite 2200  
                      San Francisco, California 94111  
                      Attention: Contracts Administration  
                      (415) 955-3416 (telecopy)

13.2 This Lease shall be binding upon and shall inure to the benefit of Lessee, Lessor and, to the extent assignment hereof is permitted hereby, their respective successors and assigns.

13.3 Lessee will, promptly, but in no event later than 45 days after the new markings and Lessor identification are affixed to the Cars by Lessee pursuant to Section 5.4 hereof, cause an addendum to this Lease to be filed with the ICC in accordance with 49 U.S.C. 11303. Lessee will furnish Lessor a copy of such addendum of this Lease as so filed within 5 days after the date of filing.

13.4 This Lease constitutes the entire agreement between the parties hereto. No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee.

13.5 Lessee's obligations hereunder shall survive the expiration or termination of this Lease.

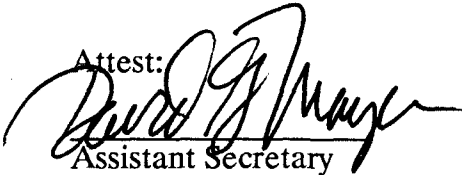
13.6 This Lease shall be governed by and construed in accordance with the laws of the State of California.

13.7 If any provision of this Agreement shall be held unenforceable or void, such unenforceability or invalidity shall not affect the validity or enforceability of other provisions hereof.

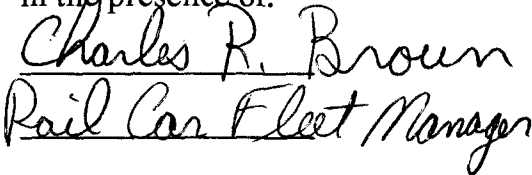
13.8 Lessee and Lessor shall from time to time do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by the other to establish, maintain and protect their respective rights and remedies and to carry out and effect the intents and purposes of this Lease.

13.9 If Lessee fails to perform any of its obligations under this Lease, Lessor may perform such obligation for Lessee and Lessee shall, on Lessor's written demand, repay Lessor for all reasonable costs and expenses incurred by Lessor in satisfying such obligation.

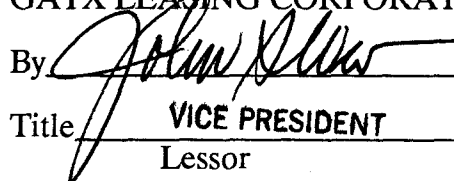
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

Attest:  
  
Assistant Secretary


Signed and acknowledged  
in the presence of:

  
Rail Car Fleet Manager

GATX LEASING CORPORATION

By   
Title VICE PRESIDENT  
Lessor

THE ANDERSONS, an Ohio limited partnership.  
By The Andersons Management Corp., an Ohio  
corporation and sole general partner in the Andersons

By   
Title Dir. of Transportation  
Lessee

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State of Ohio     )  
County of Lucas   ) ss:

Before me, a Notary Public, in and for said county and state, personally appeared Roger Truckor, Director of Transportation of The Andersons Management Corporation, an Ohio corporation, who acknowledged that said corporation is the sole general partner of The Andersons, an Ohio limited partnership, and he being thereunto duly authorized, did sign the foregoing instrument on behalf of said corporation and by authority of its board of directors on behalf of the partnership and that the same is the free act and deed of said officer of said corporation and partnership.

In Testimony Whereof, I have hereunto set my hand and official seal of Maumee, Ohio, this 1st day of September, 1989.

*Mark F. Werner*

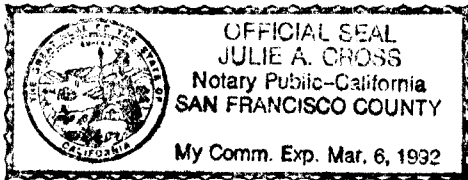
Notary Public

My commission expires: *April 6, '91*

STATE OF California }  
COUNTY OF San Francisco } ss:

On this 1<sup>st</sup> day of September, 1989, before me personally appeared John B. West, to me personally known, who, being by me duly sworn, says that he is a Vice President of GATX Leasing Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors; and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)



Julie A. Cross  
Notary Public

My Commission Expires: 3/6/92

Exhibit A

SCHEDULE NO. \_\_\_\_

This Schedule No. \_\_, dated \_\_\_\_, 1989, is a part of the Master Equipment Lease Agreement, dated as of June 15, 1989 (the "Lease"), between GATX Leasing Corporation, a Delaware corporation, and The Andersons, an Ohio limited partnership. the terms used in this Schedule shall have the meanings given them in the Lease unless otherwise defined herein.

1. Description of Cars, etc.

Lessee represents that the Cars to be accepted on the Delivery Dates are accurately described as follows: 99-4600 cubic feet covered hopper cars manufactured by ACF Industries, Inc, equipped with gravity gates installed by Lessee and bearing the "new" road numbers set forth on Annex 1 hereto.

2. Term; Acceptance; Other Confirmations and Covenants

(a) The term of the Lease with respect to the Cars covered by this Schedule shall commence, for each Car, on its Delivery Date and end .

(b) By acceptance each Car, Lessee confirms that Car is in serviceable condition, free of broken, damaged or missing parts, is suitable for Lessee's purposes, and meets applicable interchange and safety standards as prescribed by the Interchange Rules and the FRA.

(b) Lessee confirms that, by giving the Delivery Notice to Lessor: (i) all of the Cars described in such Delivery Notice shall, unless rejected in accordance with the Lease, become subject to the terms of the Lease and this Schedule on the applicable Delivery Date; (ii) the term of the Lease with respect to said Cars shall then commence; and (iii) Lessee shall then become obligated to pay to Lessor rent as provided herein and in the Lease.

(c) On the date hereof, the representations and warranties contained in Section 4 of the Lease are true and correct, and there exists no Event of Default.

3. Rent

Starting on the Delivery Date of a Car, rent for such Car shall be \_\_\_\_\_ per month, payable each month in advance during the term of the Lease, and as otherwise set forth in Section 2 of the Lease.

4. Options

(a) Provided that the Lease has not been terminated and that no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing, Lessee may elect one of the following options:

- (i) Lessee's Option to Renew at a Fixed Rental: Lessee may elect to renew the Lease with respect to all, but not less than all, of the Cars at the expiration of the initial term of the Lease for 30 months for a rent equal to \$305.00 per Car for such additional period, which rent shall be paid monthly in advance. This option must be exercised by written notice delivered to Lessor not more than 180 days and not less than 120 days prior to the expiration of such Lease term.
- (ii) Lessee's Option to Renew at Fair Market Rental: Lessee may elect to renew the Lease with respect to all, but not less than all, of the Cars at the expiration of the fixed renewal term described in Section 4(a)(i) above for 30 months for a rent equal to the "Fair Rental Value" as defined in Section 4 (b) below of such Cars for such additional period, which rent shall be paid monthly in advance. This option must be exercised by written notice delivered to Lessor not more than 180 days and not less than 120 days prior to the expiration of such renewal term.
- (iii) Lessee's Option to Purchase: Lessee may elect to purchase all, but not less than all, of the Cars at the expiration of the either renewal term described in Section 4(a)(i) or (ii) above to the "Fair Market Value" thereof as defined in Section 4(b) below as of the end of such term, plus any applicable sales or other transfer tax. This option must be exercised by written notice delivered to Lessor not more than 180 days and not less than 120 days prior to the expiration of such Lease term.

(b) Determination of Fair Market Value and Fair Rental Value: Fair Market Value or Fair Rental Value, as the case may be, shall be determined on the basis of and shall be equal in amount to the value which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee-user (other than a used equipment dealer) and an informed and willing seller or lessor under no compulsion to sell or lease, on the assumptions that such Cars: (i) are being sold "in place and in use" by Lessee; (ii) are free and clear of all Liens; and (iii) are in the condition required upon the return of the Cars under Section 8 of the Lease. In such determination, costs of removal from the location of current use shall not be a deduction from such value(s). If Lessor and Lessee are unable to agree on the Fair Market Value or Fair Rental Value of such Units within 30 days after notice of exercise of one of the option(s) provided above has been received by Lessor, such value shall be determined in accordance with the foregoing definition(s) by a qualified independent appraiser mutually agreeable to Lessor and Lessee or, failing such agreement, by three appraisers, one selected by Lessee, one selected by Lessor and one selected by the appraisers selected by Lessor and Lessee. Such appraisers shall be furnished with a copy of this Lease and the Schedule and be instructed to deliver its determination in writing to Lessor and Lessee within 30 days following appointment. Each of Lessee and Lessor shall pay the fees and expenses of appraisers selected by it and shall pay one-half of all other appraisal fees.

(c) Warranties: The purchase of the Cars by Lessee pursuant to its option herein shall be "as is, where is", without recourse to or any warranty by Lessor, other than a warranty that the Cars are free and clear of Liens resulting from acts of Lessor.

This Schedule has been duly executed and delivered by the undersigned as of the Delivery Date.

**GATX LEASING CORPORATION**

Attest:

\_\_\_\_\_  
Assistant Secretary

Signed and acknowledged  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_  
Lessor

THE ANDERSONS, an Ohio limited partnership.  
By The Andersons Management Corp., an Ohio  
corporation and sole general partner in the Anderson

By \_\_\_\_\_

Title \_\_\_\_\_  
Lessee

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## ANNEX 1

OLD NUMBER	NEW NUMBER
GTW 138100	AEX 351
GTW 138101	AEX 352
GTW 138102	AEX 353
GTW 138103	AEX 354
GTW 138104	AEX 355
GTW 138105	AEX 356
GTW 138106	AEX 357
GTW 138107	AEX 358
GTW 138108	AEX 359
GTW 138109	AEX 360
GTW 138110	AEX 361
GTW 138111	AEX 362
GTW 138112	AEX 363
GTW 138113	AEX 364
GTW 138114	AEX 365
GTW 138115	AEX 366
GTW 138116	AEX 367
GTW 138117	AEX 368
GTW 138118	AEX 369
GTW 138119	AEX 370
GTW 138120	AEX 371
GTW 138121	AEX 372
GTW 138122	AEX 373
GTW 138123	AEX 374
GTW 138124	AEX 375
GTW 138125	AEX 376
GTW 138126	AEX 377
GTW 138127	AEX 378
GTW 138128	AEX 379
GTW 138129	AEX 380
GTW 138130	AEX 381
GTW 138131	AEX 382
GTW 138132	AEX 383
GTW 138133	AEX 384
GTW 138134	AEX 385
GTW 138135	AEX 386
GTW 138136	AEX 387
GTW 138137	AEX 388
GTW 138138	AEX 389
GTW 138139	AEX 390
GTW 138140	AEX 391
GTW 138141	AEX 392
GTW 138142	AEX 393
GTW 138143	AEX 394
GTW 138144	AEX 395
GTW 138145	AEX 396
GTW 138146	AEX 397
GTW 138147	AEX 398
GTW 138148	AEX 399
GTW 138149	AEX 400
GTW 138150	AEX 401

## ANNEX 1

OLD NUMBER	NEW NUMBER
GTW 138152	AEX 403
GTW 138153	AEX 404
GTW 138154	AEX 405
GTW 138155	AEX 406
GTW 138156	AEX 407
GTW 138157	AEX 408
GTW 138158	AEX 409
GTW 138159	AEX 410
GTW 138160	AEX 411
GTW 138161	AEX 412
GTW 138162	AEX 413
GTW 138163	AEX 414
GTW 138164	AEX 415
GTW 138165	AEX 416
GTW 138166	AEX 417
GTW 138167	AEX 418
GTW 138168	AEX 419
GTW 138169	AEX 420
GTW 138170	AEX 421
GTW 138171	AEX 422
GTW 138172	AEX 423
GTW 138173	AEX 424
GTW 138174	AEX 425
GTW 138175	AEX 426
GTW 138176	AEX 427
GTW 138177	AEX 428
GTW 138178	AEX 429
GTW 138179	AEX 430
GTW 138180	AEX 431
GTW 138181	AEX 432
GTW 138182	AEX 433
GTW 138183	AEX 434
GTW 138184	AEX 435
GTW 138185	AEX 436
GTW 138186	AEX 437
GTW 138187	AEX 438
GTW 138188	AEX 439
GTW 138189	AEX 440
GTW 138190	AEX 441
GTW 138191	AEX 442
GTW 138192	AEX 443
GTW 138193	AEX 444
GTW 138194	AEX 445
GTW 138195	AEX 446
GTW 138196	AEX 447
GTW 138197	AEX 448
GTW 138198	AEX 449
GTW 138199	AEX 450

ANNEX 1  
TO  
MASTER EQUIPMENT LEASE AGREEMENT  
DATED AS OF  
JUNE 15, 1989

STIPULATED LOSS VALUES

(See Attached Sheet)

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ANNEX 1

Payment Number	SLV	Payment Number	SLV
1	21,500	57	15,914
2	21,200	58	15,786
3	21,131	59	15,657
4	21,059	60	15,527
5	20,986	61	15,395
6	20,913	62	15,262
7	20,839	63	15,128
8	20,763	64	14,992
9	20,687	65	14,855
10	20,611	66	14,716
11	20,533	67	14,576
12	20,455	68	14,434
13	20,376	69	14,291
14	20,296	70	14,146
15	20,215	71	14,000
16	20,133	72	13,852
17	20,050	73	13,702
18	19,967	74	13,551
19	19,882	75	13,399
20	19,797	76	13,244
21	19,711	77	13,088
22	19,624	78	12,931
23	19,536	79	12,772
24	19,447	80	12,611
25	19,357	81	12,448
26	19,266	82	12,278
27	19,174	83	12,107
28	19,081	84	11,934
29	18,987	85	11,760
30	18,893	86	11,583
31	18,797	87	11,404
32	18,700	88	11,224
33	18,602	89	11,042
34	18,503	90	10,857
35	18,403	91	10,671
36	18,302	92	10,483
37	18,200	93	10,292
38	18,097	94	10,100
39	17,993	95	9,906
40	17,887	96	9,709
41	17,781	97	9,511
42	17,673	98	9,310
43	17,564	99	9,108
44	17,454	100	8,903
45	17,343	101	8,696
46	17,231	102	8,486
47	17,117	103	8,275
48	17,003	104	8,061
49	16,887	105	7,845
50	16,770	106	7,627
51	16,651	107	7,406
52	16,531	108	7,183
53	16,411	109	6,958
54	16,288	110	6,730
55	16,165	111	6,500
56	16,040		